

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:06cr12WJG-RHW-1

KENNETH SPARROW

ORDER

THIS CAUSE is before the Court on motion [33] of the Defendant, Kenneth Sparrow, for reconsideration of the order denying sentence reduction , (Ct. R., Doc. 32), pursuant to 18 U.S.C. § 3582(c)(2) based upon recent amendments to the sentencing guidelines applicable to offenses involving cocaine base, and the subsequent decision by the United States Sentencing Commission [Sentencing Commission] to make this amendment retroactive, pursuant to United States Sentencing Guideline § 1B1.10 effective March 3, 2008.

Sparrow contends that the Court erred in denying his motion to reduce his sentence because the denial was based on a non-conclusive drug amount attributed to him by the Court. (Ct. R., Doc. 33, p. 1.) He claims that the drug amount was not submitted to a jury, was not based on the indictment and that under *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are no longer mandatory. (*Id.*, p. 4.) He contends that Amendment 706 to the United States Sentencing Guidelines [USSG] mandates that a lesser sentence applies in his case. (*Id.*)

Booker did not address resentencings under section 3582. The statute which provides the Court with jurisdiction to adjust the Defendant's sentence specifically limits the Court's authority

to a reduction "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). In addition, the Court has discretion to determine a reasonable and appropriate sentence under the amendment, based on an individualized assessment of the facts presented in each case and the factors outlined in 18 U.S.C. § 3553(a). Nothing in section 3582(c) gives the Court discretion to depart from USSG § 1B1.10 when determining the proper sentence under section 3582(c).

To the extent Defendant's challenge is a challenge to the misapplication of the USSG, it is not cognizable on collateral review. *United States v. Williamson*, 183 F.3d 458, 462 (5th Cir. 1999). In addition, Defendant's *Booker* claims – that facts not decided by a jury were used in sentencing a defendant – are not cognizable on collateral review. *In re Elwood*, 408 F.3d 211, 212 (5th Cir. 2005). Based on the foregoing, the Court finds that Defendant's motion for reconsideration should be denied. It is therefore ,

ORDERED that Defendant Kenneth Sparrow's motion [33] for reconsideration of the Court's order denying a reduction of his sentence be, and is hereby, denied. It is further,

ORDERED that all terms and provisions of the original order denying a sentence reduction under section 3582(c)(2), (Ct. R., Doc. 32), remain unchanged and in full force and effect.

SO ORDERED this the 16th day of September, 2008.

Walter J. Giv III
UNITED STATES SENIOR DISTRICT JUDGE